

FCC MAIL ROOM  
**ORIGINAL**  
 Before the  
 Federal Communications Commission  
 Washington, D.C. 20554  
 AUG 5 4 03 PM '93

DISPATCHED BY MM Docket No. 93-227

In the Matter of

Amendment of Section 73.202(b). RM-8292  
 Table of Allotments.  
 FM Broadcast Stations.  
 (Marathon and Stevens Point,  
 Wisconsin)

#### NOTICE OF PROPOSED RULE MAKING

Adopted: July 22, 1993; Released: August 5, 1993

Comment Date: September 27, 1993

Reply Comment Date: October 12, 1993

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Eagle of Wisconsin, Inc. ("petitioner"), requesting the substitution of Channel 285A for Channel 285C3 at Marathon, Wisconsin, and reallocation of Channel 285A to Stevens Point, Wisconsin.<sup>1</sup> Petitioner also requests modification of its authorization for Station WMGU(FM) to specify operation on Channel 285A at Stevens Point. Petitioner states it will apply for Channel 285A at Stevens Point.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See *Modification of FM License ("Change of Community R&O")*, 4 FCC Rcd 4870, *recon. granted in part ("Change of Community MO&O")*, 5 FCC Rcd 7094 (1990). Petitioner recognizes that the Commission prohibits the removal of a community's sole local transmission service, except "in rare circumstances where removal of a local service might serve the public interest." *Change in Community MO&O*, 5 FCC Rcd at 7096. Petitioner claims that removal of Marathon's sole local transmission service is warranted in this case.

3. Petitioner acknowledges that the reallocation and downgrading of Channel 285 would provide Stevens Point with its second commercial FM channel.<sup>2</sup> Petitioner notes that WMGU(FM) was originally licensed to operate on

Channel 285A at Stevens Point, Wisconsin. However, at petitioner's request, Channel 285C3 was substituted for Channel 285A and the community of license changed from Stevens Point to Marathon. See 6 FCC Rcd 3649 (1991). Further, petitioner filed an application and was granted a construction permit to operate on Channel 285C3 at Marathon.<sup>3</sup> The Marathon station was never constructed, and petitioner has now determined that the construction and operation of a station at Marathon is neither practical nor feasible. Petitioner contends that allotment of Channel 285A at Stevens Point at its requested site will allow the station to expand its coverage by operating as a six kilowatt facility rather than a three kilowatt facility. Petitioner argues that since Station WMGU(FM) is currently off-the-air in Stevens Point and is unable to construct a station to serve Marathon, the public is better served by reallocating Channel 285 to Stevens Point to operate as a full class A facility.

4. We do not generally believe that the public interest is served by removing a community's sole local service merely to provide a transmission service to another community. Although the removal of Channel 285C3 from Marathon will remove that community's only potential local service, Channel 285A will provide expanded service to Stevens Point. However, since Station WMGU(FM) has never been on the air in Marathon, a change in community will not cause any disruption to existing reception or transmission service. Therefore, we initially accept petitioner's claims that it is neither practical nor economically feasible to operate a station in Marathon, and we believe the public interest could be served by seeking comments on this proposal. We request comments on our tentative conclusion that a waiver of our restriction on removal of sole existing local transmission service is warranted in this instance. Petitioner is requested to provide information explaining why the allotment at Marathon is neither practical nor feasible, as well as any other information regarding the public interest benefits of this proposal.

5. As requested, we shall propose to modify the authorization for Channel 285C3, Station WMGU(FM), Marathon, to specify operation on Channel 285A at Stevens Point, Wisconsin, in accordance with Section 1.420(i) of the Commission's Rules. An engineering analysis has determined that Channel 285A can be allotted to Stevens Point in compliance with the Commission's minimum distance separation requirements at petitioner's specified site 9 kilometers (5.6 miles) northwest of the community.<sup>4</sup> The site restriction will prevent a short spacing to Channel 285A, Station WNFM, Reedsburg, Wisconsin. We shall not accept competing expressions of interest in the use of Channel 285A at Stevens Point or require the petitioner to demonstrate the availability of an additional equivalent class channel at Stevens Point.

<sup>1</sup> An application for the assignment of the license for Station WMGU(FM), Stevens Point, from petitioner to Seehafer Broadcasting Corporation has been accepted for filing (BALH-930129GJ).

<sup>2</sup> Station WMGU(FM) is presently silent pursuant to Commission authorization. Stations WSPO(AM)/WSPT(FM), Stevens Point are both licensed to Americus Communications #1

Limited Partnership.

<sup>3</sup> The construction permit for Channel 285C3 at Marathon expired on June 2, 1993 (BPH-910830ID). Petitioner has requested forfeiture of the construction permit for Channel 285C3 at Marathon.

<sup>4</sup> The coordinates for Channel 285A at Stevens Point are 44-35-25 and 89-37-31.

6. Accordingly, the Commission believes it would be in the public interest to seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following communities:

City	Channel No.	
	Present	Proposed
Marathon, Wisconsin	285C3	---
Stevens Point, Wisconsin	250C1	250C1, 285A

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before **September 27, 1993**, and reply comments on or before **October 12, 1993**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Allan G. Moskowitz  
Kaye, Scholer, Fierman, Hays & Handler  
901 15th Street, N.W., Suite 1100  
Washington, D.C. 20005

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in this proceeding.

## FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

## APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, **IT IS PROPOSED TO AMEND** the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate

of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.